

***Remarks***

Reconsideration of this Application is respectfully requested. Claims 1-32 are pending in the application, of which claims 1, 11, 15, 23, and 28 are independent. Claims 11, 12, 15-22 and 28 are sought to be amended. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding rejections.

***Rejection under 35 U.S.C. § 102***

The Examiner, on page 2 of the Office Action, has rejected claims 15, 16, 20, and 22 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,067,557 to Hedge. Applicant respectfully traverses this rejection. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With respect to independent claim 15, Hedge does not teach or suggest Applicant's invention. For example, Hedge does not teach or suggest at least the following elements of Applicant's claim 15:

- (a) adding a network task to said task pool;
- (b) estimating the network bandwidth to be employed to complete said network task;

- (c) assigning a priority value to said network task, wherein said priority value is based at least in part on the estimated network bandwidth; and
- (d) updating said task pool based at least in part on completion of said network task.

Instead, as the Examiner states on page 4 of the Office Action, Hedge teaches CPU bandwidth, not network bandwidth.

Thus, for at least the foregoing reasons, Applicant respectfully submits that independent claim 15, and the claims that depend therefrom (claims 16-22) are not anticipated by Hedge. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claim 15, and the claims that depend therefrom (16, 20, and 22).

***Rejection under 35 U.S.C. § 103***

The Examiner, on page 4 of the Office Action, has rejected claims 1-5, 9-10, 21, 23-24, and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”). Applicant respectfully traverses this rejection. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

With regards to independent claim 1, the Examiner states that Hedge teaches Applicant’s maintaining, assigning, and processing elements. Applicant respectfully disagrees. Hedge does not teach at least the following elements as recited in claim 1:

- (b) assigning a priority value to at least a portion of said network related tasks, wherein said priority value is based at least in part on

network bandwidth to be employed in order to process said network related tasks;

(c) periodically monitoring available network bandwidth on said network; and

(d) processing said network related tasks based at least in part on the priority values, and the available network bandwidth.

Contrary to the present invention, Hedge teaches “allocating a guaranteed percentage of *CPU bandwidth to a process or a group of processes in the system*. With bandwidth allocation, a process or a group of processes are guaranteed to get their share of *CPU time* irrespective of the network traffic load. Thus, all the important processes including the process which services the requests from the NMS, the process which signals the policy server to enforce a policy, and the process which maps or un-maps connections are guaranteed to run on time. *Hedge*, col. 4, lines 34-43. Thus, as the Examiner admits on page 4 of the Office Action, contrary to the present invention which teaches network bandwidth, Hedge teaches CPU bandwidth.

The Examiner states on page 4 (item 4) that Hedge does not teach monitoring the available network bandwidth. The Examiner further states that Shah teaches this element. Applicant respectfully disagrees.

Shah does not solve the deficiencies of Hedge. For example, with respect to claim 1, Shah does not teach or suggest at least the following elements:

(b) assigning a priority value to at least a portion of said network related tasks, wherein said priority value is based at least in part on network bandwidth to be employed in order to process said network related tasks;

(d) processing said network related tasks based at least in part on the priority values, and the available network bandwidth.

Shah teaches integrating link-layer management with network layer traffic management. *Shah*, Abstract. Contrary to the present invention, Shah teaches that some embodiments have different classes of packet data; such as high priority data packets and low priority data packets. *Shah*, para. [0069]. In Shah, if the packet portion has insufficient capacity to carry both the high priority data packets and the low priority data packets, the low priority data packets may be dropped or retransmitted at a later time. *Id.* Thus, unlike the present invention which is related to prioritizing network tasks, Shah teaches prioritized packet data.

Also, Hedge is related to CPU bandwidth and Shah is related to integrating link-layer management with network layer traffic management. Thus, the motivation to combine Hedge with Shah is lacking.

Thus, neither Hedge nor Shah, separately or in combination, teach or suggest Applicant's claimed invention as recited in independent claim 1. For at least the foregoing reasons, Applicant respectfully submits that independent claim 1, and the claims that depend therefrom (claims 2-10) are patentable over Hedge and Shah. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claim 1, and the claims that depend therefrom.

Independent claims 23 and 28 recite similar limitations to claim 1. Thus, for at least the foregoing reasons, Applicant respectfully submits that independent claims 23 and 28, and the claims that depend therefrom (claims 24-27 and 29-32, respectively) are also patentable over Hedge and Shah. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claims 23 and 28, and the claims that depend therefrom.

The Examiner, on page 4 of the Office Action, has rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”). Applicant respectfully traverses this rejection. Claim 21 depends from independent claim 15 and is patentable over Hedge and Shah for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claim 21.

The Examiner, on page 9 of the Office Action, has rejected claims 6, 25, and 32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”), as applied to claims 1, 23, and 28, and further in view of U.S. Patent Appl. No. US 2002/0083185 to Ruttenburg *et al.* (hereinafter “Ruttenburg”). Applicant respectfully traverses this rejection. Claims 6, 25, and 32 depend from independent claims 1, 23, and 28, respectively, which are patentable over Hedge and Shah for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 6, 25, and 32.

The Examiner, on page 10 of the Office Action, has rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”), as applied to claim 1, further in view of U.S. Patent Appl. No. US 2002/0087722 to Datta *et al.* (hereinafter Datta), and further in view of Admitted Prior Art (APA). Applicant respectfully traverses this rejection. Claim 7 depends from independent claim 1, which is patentable over Hedge and Shah for at least the reasons stated above. Applicant therefore

respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claim 7.

The Examiner, on page 11 of the Office Action, has rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”), as applied to claim 1, and further in view of Beyssac (Announcing BING, a Small Raw IP Throughput Measurement Utility). Applicant respectfully traverses this rejection. Claim 8 depends from independent claim 1, which is patentable over Hedge and Shah for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claim 8.

The Examiner, on page 12 of the Office Action, has rejected claims 11-14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. No. US 2002/0087722 to Datta *et al.* (hereinafter Datta) in view of Admitted Prior Art (APA). Applicant respectfully traverses this rejection. Based on the remarks set forth below, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

The Examiner states, on page 12 of the Office Action, that Datta substantially teaches Applicant’s invention as recited in independent claim 11. Applicant disagrees. Dutta does not teach or suggest at least the following:

- (c) transmitting a bandwidth PING from said source node to said destination node;
- (d) receiving a bandwidth echo at said source node;
- (f) if it is determined that the bandwidth echo indicates sufficient bandwidth to process one or more network tasks, then processing the one or more network tasks based on a priority ranking for each of the one or more network tasks and available bandwidth.

Contrary to the present invention, Dutta teaches resolving domain names into IP addresses in a path sensitive manner. *Dutta*, Abstract. Dutta does not teach or suggest Applicant's elements of "transmitting a bandwidth PING ...", "receiving a bandwidth echo ...", or "if it is determined that the bandwidth echo indicates sufficient bandwidth to process one or more network tasks, then processing the one or more network tasks based on a priority ranking for each of the one or more network tasks and available bandwidth."

The Examiner further states that Dutta does not teach using a bandwidth ping and the associated response in determining bandwidth, but that APA teaches transmitting the bandwidth PING and the receipt of a bandwidth echo is inherent. Applicants respectfully disagree. The admitted prior art does not make up for the deficiencies of Dutta. Specifically, the combination of Dutta with APA does not provide for the element of "if it is determined that the bandwidth echo indicates sufficient bandwidth to process one or more network tasks, then processing the one or more network tasks based on a priority ranking for each of the one or more network tasks and available bandwidth."

Also, Dutta is related to resolving domain names into IP addresses in a path sensitive manner and the APA is related to bandwidth PINGs. Thus, the motivation to combine Dutta with APA is lacking.

Thus, neither Dutta nor the APA, separately or in combination, teach or suggest Applicant's claimed invention as recited in independent claim 11. For at least the foregoing reasons, Applicant respectfully submits that independent claim 11, and the claims that depend therefrom (claims 12-14) are patentable over Dutta and the APA. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of independent claim 11, and the claims that depend therefrom (claims 12-14).

The Examiner, on page 14 of the Office Action, has rejected claims 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge. Applicant respectfully traverses this rejection. Claims 17 and 18 depend from claim 15, which is patentable over Hedge for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 17 and 18.

The Examiner, on page 15 of the Office Action, has rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent No. 6,026,230 to Lin *et al.* (hereinafter “Lin”). Applicant respectfully traverses this rejection. Claim 19 depends from claim 15, which is patentable over Hedge for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claim 19.

The Examiner, on page 16 of the Office Action, has rejected claims 26 and 31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,067,557 to Hedge in view of U.S. Patent Appl. No. US 2002/0075869 to Shah *et al.* (hereinafter “Shah”), as applied to claims 23 and 28, and further in view of U.S. Patent No. 6,026,230 to Lin *et al.* (hereinafter “Lin”). Applicant respectfully traverses this rejection. Claims 26 and 31 depend from claims 23 and 28, respectively, which are patentable over Hedge and Shah for at least the reasons stated above. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of dependent claims 26 and 31.



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**Conclusion**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all currently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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